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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Bell Operating Company	)	CC Docket No. 96-21
Provision of Out-of-Region	)	
Interstate, Interexchange Services	)	

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To: The Commission

COMMENTS OF UTC

UTC, The Telecommunications Association (UTC), hereby submits its comments in response to the Federal Communications Commission's (FCC) *Notice of Proposed Rulemaking* (*NPRM*), released February 14, 1996, in CC Docket No. 96-21.

Summary

UTC supports the FCC's attempts to prevent problems which may arise from the ownership of bottleneck telecommunications facilities by Bell Operating Companies (BOCs). The proposed separate affiliate rules present an equitable interim solution to protect consumers and competitors from unfair competition while not unduly burdening the BOCs. UTC recommends that the FCC maintain the separate affiliate rules until competition has

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emerged in the BOCs' bottleneck markets and the competitive checklist outlined in the Telecommunications Act of 1996[1] has been satisfied.

Comments

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC's members include companies of all type, size and ownership, from large investor-owned combination electric-gas-water utilities which serve millions of customers, to smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. All utilities and pipelines depend upon reliable and secure communications to assist them in carrying out their obligations to provide service to the public.

As a potential telecommunications competitors and large end-users of telecommunications services, UTC's members are concerned that, left unchecked, the BOCs could use their bottleneck facilities in anti-competitive ways, such as by shifting costs to

[1] P.L. 104-104, signed February 8, 1996.

monopoly services. UTC supports the FCC's proposals to require BOCs to:

> (1) offer out-of-region interstate, interexchange service as non-dominant carriers through separate affiliates which: (a) maintain separate books of accounting; (b) do not jointly own transmission or switching facilities with the BOCs' local exchange companies; and (c) obtain BOC services at tarrifed rates and conditions;
>
> or
>
> (2) offer these services as a dominant carrier subject to the full panoply of Title II regulations.

Until competition in the local exchange begins in earnest, the BOCs will continue to maintain the ability to affect the market through the control of the bottleneck facilities. Competition can be choked, and consumers may be forced to pay higher rates to compensate for the lack of competition or to subsidize anti-competitive behavior. Additionally, as the FCC notes in the *NPRM*, some of the traffic from the BOCs' out-of-region operations will terminate within their region, where the BOCs retain control of the bottleneck facilities.[2] Therefore, until competitive forces can truly limit the ability of BOCs to engage in anti-competitive behaviors, the FCC should exercise

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[2] *NPRM*, ¶ 12.

heightened scrutiny of BOC out-of-region interstate, interexchange services.

The proposed rules adequately protect the public by requiring non-structural separations by or dominant carrier regulation of BOCs providing out-of-region services. In either case, the ability of the BOCs to engage in anti-competitive behavior or cost-shifting is greatly reduced.

The proposed rules are also not unduly burdensome to the BOCs. The proposed rules provide an equitable method of protecting against anti-competitive behavior, but fall far short of the excessive regulation imposed by the FCC's previous structural separation rules. As UTC noted in its comments in the *Computer III Remand* proceeding, CC Docket No. 90-623:

> From the utilities' own experience, use of separate subsidiaries to provide an essentially integrated service introduces significant inefficiencies in the transaction... The accounting safeguards proposed by the Commission will provide benefits which outweigh any diminution in the level of protection against cross-subsidization which would be available through structural separation...cross-subsidization is, after all, an accounting phenomenon...[3]

[3] UTC's Comments in CC Docket No. 90-623 (filed March 8, 1991), p. 3.

UTC supports the use of the non-structural safeguards proposed by the FCC on the BOC provision of out-of-region services.

The FCC has noted that the separate affiliate rules proposed herein are temporary and that the issue of whether out-of-region services by BOCs will need to be provided through separate subsidiaries or as dominant carriers will be the subject of a future proceeding.[4] UTC supports the Commission's proposal to reevaluate this issue in the near future. As competition emerges, the need for protection against BOC bottleneck facilities will diminish. However, at a minimum, UTC urges that heightened scrutiny of BOC out-of-region services be maintained until in-region competition emerges. Therefore, UTC recommends that the separate affiliate rules remain in effect for each BOC until it has complied with the competitive checklist required by the Telecommunications Act of 1996 for providing in-region, interLATA services.[5]

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[4] *NPRM*, ¶ 11.

[5] P.L. 104-104, Section 151 (Section 271(c)of the Communications Act as amended).

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

UTC

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Attachment A

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